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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-1161

In Regard to the Matter of:

Bayside State Prison	Opinion and Report
Litigation	of the
	Special Master

THOMAS RAY MITCHELL,

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * *

FRIDAY, MARCH 28, 2008

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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Transcript of proceedings in the above

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matter taken by Theresa O. Mastroianni, Certified

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Court Reporter, license number 30X100085700, and

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Notary Public of the State of New Jersey at the

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United States District Court House, One Gerry Plaza,

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Camden, New Jersey, 08102, commencing at 1:40 PM.

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MASTROIANNI & FORMAROLI, INC.

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Audubon, New Jersey 08106

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856-546-1100

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1 JUDGE BISSELL: The following
2 constitutes the Special Master's determination
3 regarding the complaint of Thomas Mitchell, docket
4 number 08-1161.

5 This opinion/report is being issued
6 pursuant to the directives of the Order of Reference
7 to a Special Master and the Special Master's
8 Agreement and the guiding principles of law which
9 underlie this decision to be applied to the facts
10 upon which it is based as set forth in the jury
11 instructions in the Walker and Mejias jury charges to
12 the extent applicable to the allegations in Mr.
13 Mitchell's case.

14 As finalized after review under Local
15 Civil Rule 52.1, the transcript of this oral opinion
16 will constitute the written report required by
17 paragraph seven of the Order of Reference to a
18 Special Master.

19 Mr. Mitchell resided in trailer number
20 two at Bayside Prison. The SOG officers came to
21 search that unit in August of 1997. Mr. Mitchell was
22 ordered to strip and was strip searched and
23 thereafter sent to the gym. In the course of events
24 in his cell, his shoulder was hit and he was pressed
25 up against the wall.

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1 The Special Master determines that this
2 constituted a permissible exercise of authority
3 consistent with the principles of law regarding
4 Eighth Amendment violations as previously discussed
5 and incorporated. However, Mr. Mitchell, in the
6 course of this process, was also directed to spread
7 his arms up against the wall or locker on the wall.
8 At that point, without any provocation due either to
9 threats or disobedience or insubordination of any
10 kind he was struck with considerable force on the
11 left thumb inflicting permanent injury to the first
12 knuckle where it joins his hand.

13 This action was completely unnecessary
14 and inflicted upon Mr. Mitchell while in a vulnerable
15 position, among other things with his back turned to
16 the assaulting officer.

17 I find based upon the rather limited
18 record generated in Mr. Mitchell's case that he was a
19 credible witness before this court. I find that
20 inconsistencies with regard to his description of his
21 thumb injury in the past, while probative on the
22 question of credibility or the extent of the injury,
23 are not fatal to his claim. Injuries can be
24 characterized in different ways in terms of either
25 pain, numbness or the like and/or swelling.

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1 Furthermore, I noticed both upon
2 physical inspection and from his testimony that there
3 is a permanent injury to the base of Mr. Mitchell's
4 left thumb. One can tell this by a comparison
5 between both hands which I undertook.

6 The only credible explanation, based
7 upon this record, is that stated above: That this
8 condition of his left thumb was the result of and was
9 proximately caused by the striking of that thumb by
10 the SOG officer as described.

11 I find that the injury is consistent
12 with that act, and even the passage of time, the
13 advances of age and the onset of arthritis which
14 might be, under some circumstances, considered normal
15 for one in his mid sixties, does not negate in any
16 way the cause and result of the injury due to the
17 striking which he described.

18 I find also that his failure to make
19 complaints either formally or informally about the
20 injury inflicted upon him was based upon a legitimate
21 fear of retaliation enforced by corrections officers
22 and their remarks and, therefore, he had good reason
23 not to complain for fear of further injuries as a
24 consequence.

25 On the other hand, I have considered

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1 the absence of complaints and the absence of seeking
2 medical treatment, at least up through 2002 either
3 within or outside of the prison system, as being
4 significant on the question of the extent of this
5 injury. It is a permanent injury, a permanent
6 deformity, but both the answers under oath on
7 previous occasions and candidly (and to his credit)
8 in this courtroom, Mr. Mitchell has indicated that
9 the thumb does not really bother him very much or
10 impede him very much in the course of his activities
11 at this time.

12 In the course of preliminary
13 observations regarding this decision presented from
14 the bench on March 26th, 2008, I made reference to
15 the fact that I was leaving for further consideration
16 the question of whether compensatory or nominal
17 damages should be awarded in this matter. In the
18 charge to the jury in the Walker case, Judge Kugler
19 defined the standard for nominal damages as follows,
20 and I quote: "If you find that the plaintiff has not
21 sustained actual damages, but you still conclude that
22 his legal rights were violated, then you may return a
23 verdict for the plaintiff in a nominal sum. Nominal
24 damages are awarded if you conclude that the
25 plaintiff suffered a deprivation of his rights, but

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1 did not suffer any actual damages."

2 In the case of Bar, while Mr.
3 Mitchell's injuries and any damages resulting
4 therefrom are modest, they do indeed exist and he did
5 suffer "actual damages". Accordingly, I have chosen
6 to award compensatory damages, although not in a
7 large amount.

8 The action of striking Mr. Mitchell on
9 his left thumb in the manner which he described and
10 which I have determined, in fact, occurred, go well
11 beyond the necessity of any proper law enforcement
12 needs or any proper exercise of discipline or other
13 legitimate penological purpose as well-defined in the
14 jury instructions which are incorporated here.

15 There was, indeed, excessive,
16 unnecessary and sadistic force imposed upon Mr.
17 Mitchell here within the contemplation of those legal
18 principles. However, in light of the fact that the
19 striking of Mr. Mitchell was not prolonged or
20 repeated, while actionable for recovery of
21 compensatory damages, I do not find that this assault
22 visited upon him rose to the level of being so
23 egregious as to support a claim for punitive damages,
24 at least against the unidentified officers who were
25 with him and the one who inflicted this injury.

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1 I realize, of course, the fact that the
2 officers were unidentified here; but there will come
3 a time when the issue arises as to whether there is
4 any significance to the conduct of the perpetrators
5 regarding the plaintiffs' efforts to establish
6 supervisor liability.

7 I emphasize here again, therefore, that
8 I make a finding that the conduct, although
9 actionable and which supports an award of
10 compensatory damages, was not so egregious as to
11 support an award of punitive damages under applicable
12 legal standards.

13 Finally, although not every item of
14 evidence has been discussed in this opinion/report,
15 all evidence presented to the Special Master was
16 reviewed and considered.

17 I find that the injury inflicted here
18 is actionable. I find that the injury was acute
19 initially and has remained permanent although without
20 continuing pain or any significant restriction on Mr.
21 Mitchell's activities. Accordingly, I recommend in
22 this report that the district court enter an award of
23 compensatory damages in the amount of two thousand
24 dollars in Mr. Mitchell's favor.

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C E R T I F I C A T E

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I, Theresa O. Mastroianni, a Notary Public and
Certified Shorthand Reporter of the State of New
Jersey, do hereby certify that the foregoing is a
true and accurate transcript of the testimony as
taken stenographically by and before me at the time,
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a
relative nor employee nor attorney nor counsel of any
of the parties to this action, and that I am neither
a relative nor employee of such attorney or counsel,
and that I am not financially interested in the
action.



Theresa O. Mastroianni, C.S.R.

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

Certificate No. XI0857

Date: April 4, 2008

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